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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION TWO

THE PEOPLE, Plaintiff and Respondent, v. VASILLIS FOTIOU SAKELLARIDIS, Defendant and Appellant.	E048166 (Super.Ct.No. FSB038966) OPINION

APPEAL from the Superior Court of San Bernardino County. Arthur Harrison, Judge. Affirmed.

Richard Schwartzberg, under appointment by the Court of Appeal, for Defendant and Appellant.

Edmund G. Brown, Jr., Attorney General, Dane R. Gillette, Chief Assistant Attorney General, Gary W. Schons, Assistant Attorney General, and Barry Carlton and Teresa Torreblanca, Deputy Attorneys General, for Plaintiff and Respondent.

A jury found defendant and appellant Vasillis Fotiou Sakellaridis[1] and his codefendant Joseph Harkai guilty of first degree residential robbery (Pen. Code,[2] §§ 211) and found true the allegation that they each used a firearm in the commission of the offense (§ 12022.53, subd. (b)). (Harkai is not a party to this appeal.) The trial court sentenced defendant to a total term of 14 years in state prison.

Defendant now contends that the court erred in overruling his objection to the admission of his mother's testimony that she found firearms missing from her home and believed that he stole them. We disagree and affirm.

FACTUAL BACKGROUND

Prior Uncharged Offense

About 10:00 p.m. on or about March 21, 2003, defendant's mother, Annette Sakellaridis, called the San Bernardino County Sheriff's Department to report that some guns were missing from her house. Mrs. Sakellaridis told the responding officer, Detective Daniel Finneran, that a small gun and two shotguns were missing. The small gun was not in plain view but was kept hidden underneath a hamper. The shotguns were kept in the garage in a homemade safe. The safe had a homemade lock with a one-number combination. Defendant knew the combination. The shotguns belonged to Mrs. Sakellaridis's late husband but were eventually going to be given to defendant. The house was not ransacked. Detective Finneran did not notice any signs in the home that a

[1] We note that defendant's last name is misspelled "Sakellardis" in both the opening brief and respondent's brief.

[2] All further statutory references will be to the Penal Code unless otherwise noted.

crime had been committed. At trial, Mrs. Sakellaridis said that defendant was "on the road with the Renaissance Faire" in Arizona on March 21 and March 22, 2003. However, she also testified that she had told Detective Finneran she believed defendant took the shotguns from the safe because they were going to be his. Mrs. Sakellaridis testified that defendant had permission to enter her home when she was not there.

Charged Offense

Defendant was friends with William Noren. They had known each other for approximately 12 years as of 2003. On March 21, 2003, the same day Mrs. Sakellaridis reported the burglary at her home, defendant and his friend, Harkai, went to Noren's home, which was located approximately a quarter mile away from Mrs. Sakellaridis's home. Noren was not home. He was away in Colorado on a work trip.

Defendant and Harkai knocked on the door around 8:00 p.m. Joseph Crowder, Noren's roommate, answered the door. Defendant and Harkai asked for Noren. Crowder said Noren was in Colorado. Crowder got their names and told them he would leave a message for Noren. Defendant and Harkai left but returned a few minutes later and knocked on the door again. They asked Crowder if they could use the restroom as they had a long trip to Arizona. Crowder let both of them into the house. The bathroom was located in the back of the house, near Crowder's bedroom. The door to Crowder's bedroom was open. His AR15 rifle was lying on his bed, and his Maverick shotgun was leaning against the wall in the corner of the room. Defendant and Harkai each took turns using the bathroom, while the other was in the living room talking to Crowder. Harkai

told Crowder that he and defendant were going to the Renaissance Faire in Arizona. Harkai asked Crowder if he smoked marijuana.

After defendant and Harkai had both used the restroom, they asked Crowder if they could "hang out" for a little while. Harkai took some marijuana out of his pocket, and he and Crowder started smoking it. They smoked marijuana for about 15 minutes, and Harkai said he had more marijuana that he could retrieve. Defendant and Harkai left the house to get it. In the meantime, Crowder called Noren, described defendant to him, and asked him who defendant was. Noren confirmed that the person at the house was defendant, and that he knew him. Noren said he did not know Harkai.

Defendant and Harkai returned after 15 to 20 minutes. Defendant, Harkai, and Crowder all smoked marijuana together. They talked for about one hour. Then, defendant pulled out a semiautomatic handgun, pointed it at Crowder, ordered him to get on the ground, and said, "Don't make me kill you." Harkai pointed a handgun at Crowder also. Defendant told Crowder they wanted his guns. Crowder lay down on the ground, and Harkai taped his wrists together behind his back with duct tape. He then taped Crowder's ankles together. Harkai explained that he had a drug habit to feed. Defendant and Harkai took Crowder's AR15 rifle, Maverick shotgun, two cell phones, a paintball gun, and Noren's shotgun and SKS rifle. Together, Crowder's guns were worth approximately $1,250.

Defendant and Harkai were at the house for a total of about two to three hours. After they left the house, Crowder found his keys, which were on the floor, and used

them to cut through the duct tape and free himself. Crowder then ran next door and had his neighbor call 911.

Officer Larry Falce responded to the call and arrived at Noren's home around 2:30 a.m. on March 22, 2003. Officer Falce met Crowder and noted that Crowder still had some duct tape on his right ankle. The officer also noticed that the hair on Crowder's ankles had apparently been pulled off and that there were strands of duct tape on the floor.

A few days later, Crowder viewed two independent photographic lineups and identified defendant and Harkai as the perpetrators. Crowder also made an in-court identification of defendant and Harkai at trial.

Noren testified at trial that defendant had been to his house at least a dozen times in the five years previous to the trial. Noren said defendant had been in the living room, kitchen, Crowder's bedroom, and his bedroom. He further testified that defendant had had the chance to observe his SKS rifle, shotgun, and .45-caliber pistol, and that he personally had shown defendant the SKS rifle and the shotgun in his bedroom. Noren further testified that between February and March 2003, he had fixed defendant's .22-caliber Beretta pistol for him. In addition, Noren testified that defendant was at his house seven to 10 days prior to March 21, 2003. During that visit, Noren had told defendant he would be in Colorado for work.

Defendant testified on his own behalf at trial. He admitted that he went to Noren's house in early March 2003, when defendant's girlfriend cut his hair. However, defendant denied that Noren had told him he was leaving town. Defendant also testified that on or

about March 20, 2003, he had called his mother to ask to borrow $50, because he was out of money. Defendant said that he was in Apache Junction, Arizona, at that time, working at the Renaissance Faire. He said he was paid for his work there but had no documentation or payroll stubs to show he worked there. He testified that he had left the Renaissance Faire on March 20, 2003, with Harkai. They drove to Tempe, Arizona, and stayed there for a few days. He then went to San Bernardino.

Defendant denied that he was at Noren's house on March 21 or March 22, 2003, or that he had anything to do with the thefts that took place there. He also said that in the five years previous to the trial, he did not think Noren had shown him his guns. Defendant additionally denied that he had ever taken anything to Noren's house for him to fix.

ANALYSIS

Any Error in Overruling Defendant's Objection Was Harmless

Defendant contends the court erred in admitting Mrs. Sakellaridis's testimony attesting to her belief that defendant was responsible for the burglary of her home, because the testimony was "pure speculation, . . . irrelevant to the issues at trial when offered only for her state[]of[]mind, and highly prejudicial, given that a mother who con[d]emns her son offers to jurors the most prejudicial of inadmissible character evidence . . . ." We agree that the court erred but conclude that any error was harmless.

A. *Relevant Background*

At trial, Mrs. Sakellaridis testified that shotguns were taken from the safe in her garage. The prosecutor asked if she believed she knew who took the shotguns. She said,

"No." The prosecutor asked if she told Detective Finneran that she believed someone took the shotguns from her safe, and she said, "Yes." The prosecutor then asked, "Who did you tell Deputy Finneran that you believe took the shotguns from your safe?" Defense counsel objected on the ground of hearsay. Harkai's trial counsel also objected on the grounds of speculation and lack of foundation. The court ruled as follows: "Answer will be allowed, not for the truth of the matter asserted, but as to the state of mind of the declarant." The prosecutor repeated the question, and Mrs. Sakellaridis answered, "I wasn't sure, but it could be my son." The prosecutor asked which son she was referring to, and Mrs. Sakellaridis said, "[Defendant], because they were going to be his."

B. *The Court Improperly Admitted Mrs. Sakellaridis's Testimony Regarding Her Belief that Defendant Took the Shotguns, but Any Error Was Harmless*

There was no physical evidence that defendant burglarized Mrs. Sakellaridis's home and stole guns from her. Rather, Mrs. Sakellaridis speculated that defendant took the guns. The court admitted the testimony that she believed defendant took the shotguns from the safe on the ground that it went to her state of mind. However, Mrs. Sakellaridis's state of mind was not relevant to the charges for which defendant was on trial. Moreover, the evidence of the burglary of Mrs. Sakellaridis's house had limited probative value since it tended only to show that the thief was *an insider,* who knew where the guns were kept. On appeal, the People assert that Mrs. Sakellaridis's testimony that she thought defendant took the guns was probative because it showed that defendant was not in Arizona on the date of the robbery, as he claimed. However,

Mrs. Sakellaridis also testified that she thought defendant was in Arizona at the Renaissance Faire on March 21, 2003. Because the evidence at issue was speculative, irrelevant, and of little probative value, the court erred in overruling defendant's objection to its admission.

In any event, the error in admitting any evidence of the burglary was harmless, since it is not reasonably probable the outcome would have been any different if the evidence had been excluded. (*People v. Watson* (1956) 46 Cal.2d 818, 836; *People v. Benavides* (2005) 35 Cal.4th 69, 91.) There was overwhelming evidence of defendant's guilt. The only real issue was whether Crowder's identification of defendant at the photographic lineup and in court was credible. First, Crowder spent two to three hours talking with defendant and Harkai on the night at issue, and had ample opportunity to see exactly what they looked like. Second, both men told Crowder their names. Third, Noren testified that Crowder called him while defendant and Harkai had stepped out. Crowder described defendant over the telephone, and Noren confirmed it was defendant. Fourth, Crowder testified that defendant and Harkai had said they were going out to the Renaissance Faire in Arizona. Defendant testified at trial that, at or around March 20, 2003, he was working at the Renaissance Faire in Arizona, and that he was with Harkai there. Contrary to defendant's claim, Crowder did not know defendant and Harkai. Crowder testified he had never seen them before March 21, 2003. Therefore, the chances of Crowder identifying two people independently (in the photographic lineup), who were friends, were minimal. Moreover, the two people he identified were admittedly together at the time of the charged crime. Furthermore, the chances of Crowder knowing that

defendant was going to the Renaissance Faire in Arizona, unless defendant or Harkai had told him, were slim to none.

Ultimately, the case boiled down to a credibility contest. Defendant testified he was in Arizona around the time of the robbery, but he did not have any documentation to show that he was working at the Renaissance Faire, and he could not remember where he stayed after he left the Faire. Defendant flatly denied being at Noren's house on March 21, 2003, or having anything to do with the thefts that occurred. Defendant's self-serving testimony was sharply contradicted by the evidence of Crowder's photographic lineup identification and in-court identification of defendant, as well as Crowder's testimony of what occurred on the night of the incident. It is well settled that "it is the function of the trier of fact to determine the credibility of witnesses, weigh the evidence and resolve all factual conflicts [citation], and this court may not reweigh the evidence and reject the finding of the trier on credibility of the witnesses. [Citation.]" (*People v. McKissack* (1968) 259 Cal.App.2d 283, 287.) The conflict in the testimonies here was squarely placed before the jury, and the jury simply determined that Crowder was more credible. We must accept that determination. (*People v. Franz* (2001) 88 Cal.App.4th 1426, 1447; *McKissack*, *supra*, at p. 287.)

Defendant finally claims the jurors could not have ignored the "highly prejudicial opinion of a parent that her son was a burglar," and that Mrs. Sakellaridis's testimony somehow affected the jury's ability to evaluate the credibility of Crowder and defendant. He cites *People v. Maestas* (1993) 20 Cal.App.4th 1482, pages 1498 through 1501, *People v. Perez* (1981) 114 Cal.App.3d 470, and *In re Wing Y.* (1977) 67 Cal.App.3d 69,

in support of his claim. However, these cases are inapposite, since they specifically involved the improper admission of gang membership evidence to show criminal propensities. (*Maestas, supra,* at pp. 1497-1498; *Perez, supra,* at p. 477; *Wing Y., supra,* at pp. 78-79.)

DISPOSITION

The judgment is affirmed.

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HOLLENHORST
Acting P. J.

We concur:

KING
J.

MILLER
J.